

**KENTUCKY PERSONNEL BOARD
MINUTES OF SEPTEMBER 14, 2012**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on September 14, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon-Griffin, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD AUGUST 10, 2012**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Dr. Stevens seconded, and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Board members have received a copy of the compliance memorandum from the Hon. Nicole Liberto, Department of Agriculture. Mr. Sipek informed the Board that their recommendation that the Department conduct training on Position Descriptions was completed. Mr. Jim Lambert, Personnel Cabinet, Office of Classification and Compensation, developed the program and Mr. Larry Gillis was the instructor. Ms. Alisa Edwards attended that training, and a copy of her certificate is attached to the Department's memorandum. This closes the last of the items required by the Department and puts an end to that investigation (No. 11-02).

Mr. Sipek stated that Mr. Crocker, Ms. Herndon-Griffin, Mr. Gillis (President of IPMA) and himself will participate at the IPMA conference to discuss Board appeals with Human Resources' professionals.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington and the Hon. Joe Cowles came forward to present the Personnel Cabinet's report.

Ms. Bevington advised that regulation amendments will be presented at the October Board meeting.

Mr. Cowles provided some background information about the employees' health insurance which is a self-funded, non-ERISA, state government, group health plan. There are approximately 158,000 employee plan holders; and altogether about 275,000 members, including dependants. There are about 50,000 retired employees who are on the group plan until age 65, when they go to a Medicare supplement plan.

Mr. Cowles stated it was a very complex plan which touched every county and every city in Kentucky. The plan has been self-insured since 2006 and is around 1.8 billion dollars annually.

Mr. Cowles explained that the group plan is a "grandfathered plan." That is, a group plan that was in existence in 2010 before President Obama's Health Care Reform was enacted. In order to keep the "grandfathered" status, no changes can be made to the plan itself; however, new employees may be added to the plan.

Mr. Cowles advised that open enrollment for the Kentucky Employees' Health Plan for 2012 will be October 8 through October 26, 2012. A global e-mail will be sent out to notify the employees. This is a passive open enrollment, which means if an employee wants to keep his present health care plan as it is there is no need to re-enroll. There will be eight benefit fairs to be held across the state. One will be held in Frankfort on October 8, 2012, at the Personnel Cabinet in the State Office Building. Free flu shots will be given at each fair.

Mr. Cowles stated that in providing a culture of wellness, HumanaVitality is a free wellness program offered to employees. HumanaVitality is an on-line program that provides the tools to maintain health and wellness goals (pedometers, biometric screenings, health assessments, etc.). Employees can earn rewards as they reach their goals. Mr. Cowles stated that while HumanaVitality is a voluntary program, that may not be the case in the future as more employers want to improve productivity and to lower absenteeism. To promote HumanaVitality, which was launched this year, a “refer a friend” challenge was initiated to encourage more employee participation. Chairman Sapp asked how many employees participate in this program. Mr. Cowles estimated between 12,000 and 13,000 employees (less than 10 percent).

Upon conclusion of the Personnel Cabinet’s report, Chairman Sapp called the parties forward for the petitioned position.

5. PETITIONED POSITION REQUEST

Cabinet for Economic Development -- Deputy Executive Director

Present were Hon. Holly Spade, Chief of Staff of the Cabinet for Economic Development, and Ms. Mandy Lambert, Executive Director, Office of Research and Public Affairs.

Ms. Spade stated that the Cabinet for Economic Development went through a major reorganization; consolidating four departments’ duties and responsibilities to one department. Through attrition since 2005, the Cabinet has lost high-level staff (i.e. Commissioners, Deputies, and Directors). By consolidating, many non-merit positions assigned to several high-level officers were transferred to an office with one high-level officer (Ms. Lambert). The Cabinet wants to establish a Deputy Executive Director, non-merit, position to assist the Executive Director in providing management and development and implementation of policy. Ms. Spade stated that the Cabinet currently has 75 employees; 21 being non-merit. The Office of Research and Public Affairs has 18 employees and 3 vacancies.

Ms. Lambert stated that the Office of Research and Public Affairs was created to research and market Kentucky as a pro-active, dynamic place to do business with a goal to create jobs, to create public relations, press releases, and to track new industries across the state.

Mr. Hutcheson moved to approve the establishment of the Deputy Executive Director position with the Cabinet for Economic Development, Office of Research and Public Affairs. Dr. Stevens seconded and the motion carried 7-0.

6. **ORAL ARGUMENTS**

A. ~~Daymon Duvall v. Justice and Public Safety Cabinet (Corrections)~~
Moved to October

B. Salvatore Piscioneri v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, the Hon. Doug Howard, and counsel for Appellee, the Hon. Marian Hogan. After presenting oral arguments, the parties answered questions from the Board.

7. **INVESTIGATIONS**

Department of Agriculture: Referral of Personnel Matters in the Auditor's Report and the Anonymous Request for Investigation.

Chairman Sapp asked for an update of the Agriculture investigation.

Mr. Sipek stated that he had nothing new to report to the Board at this time.

8. **CLOSED SESSION**

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Dr. Stevens seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (10:45 a.m.)

Mr. Hutcheson moved to return to open session. Ms. Herndon-Griffin seconded and the motion carried 7-0. (12:30 p.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

- A. ~~Daymon Duvall v. Justice and Public Safety Cabinet (Corrections)~~
Moved to October

- B. Salvatore Piscioneri v. Cabinet for Health and Family Services

Mr. Blevins moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-2, with Judge Chandler and Dr. Stevens opposing.

- C. Hershel Adkins v. Justice and Public Safety Cabinet (Corrections) and Charles Pennington (Promotion—Appeal sustained)
(Deferred From August Meeting)

Mr. Hutcheson moved to note Appellant's exceptions, Intervenor's exceptions, Appellee's exceptions, Intervenor's response to Appellant's exceptions and oral arguments and to amend the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order that the Appellee complied with the statutory and regulatory requirements and to dismiss the appeal, as attached to the minutes. The Board concluded there was no political influence or violation of Section 2 of the Kentucky Constitution during the process. Mr. Blevins seconded and the motion lost 3-4, with Mr. Sapp, Mr. Gillis, Dr. Stevens and Ms. Herndon-Griffin opposing.

Mr. Gillis moved to note Appellant's exceptions, Intervenor's exceptions, Appellee's exceptions, Intervenor's response to Appellant's exceptions and oral arguments and to alter the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, that the Appellee received erroneous information during the promotional process; therefore, the appeal be sustained to the extent that the promotion of Charles Pennington be voided; that the position be re-advertised and a new position be filled by the Appellee, Department of Corrections, to ensure appropriate consideration be given to the statutory and regulatory factors set forth in KRS

18A.0751(4)(f) and 101 KAR 1:400, as attached to the minutes. The Board concludes there was no political influence or violation of Section 2 of the Kentucky Constitution during the process. Ms. Herndon-Griffin seconded and the motion carried 4-3, with Mr. Blevins, Judge Chandler and Mr. Hutcheson opposing.

D. Ocie Appleton v. Bashford Manor East

Mr. Hutcheson moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

E. Dean Croft v. Transportation Cabinet

Judge Chandler moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

F. Robert Dickow v. Tourism, Arts and Heritage Cabinet (Parks)

Mr. Gillis moved to note Appellee's exceptions (oral argument request untimely) and Appellant's response and to defer this matter to the next Board meeting. Ms. Herndon-Griffin seconded and the motion carried 7-0.

G. Jonathan Bowman v. Justice and Public Safety Cabinet (DJJ)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

H. Sarah Pilgrim v. Cabinet for Health and Family Services

Mr. Gillis moved to accept the recommended order sustaining to the extent of reinstatement with a five-day suspension. Mr. Hutcheson seconded and the motion carried 7-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- I. Reyana Duncan v. Cabinet for Health and Family Services
- J. Anthony Quire v. Cabinet for Health and Family Services
- K. Mark K. Schneider v. Cabinet for Health and Family Services
- L. Chelsea Smith v. Justice and Public Safety Cabinet (Corrections)

Dr. Stevens moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Ms. Herndon-Griffin seconded and the motion carried 7-0.

10. WITHDRAWALS

Mr. Hutcheson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Herndon-Griffin seconded and the motion carried 7-0.

- A. Darlene Barber v. Cabinet for Economic Development
- B. Jehmie Durham v. Personnel Cabinet
- C. Carol Ferm v. Tourism, Arts & Heritage Cabinet (Parks)
- D. Matt Finley v. Public Protection Cabinet (2 appeals)
- E. Linda Grow v. Labor Cabinet (2 appeals)
- F. John Paul King v. Cabinet for Health and Family Services and Personnel Cabinet
- G. Stacy Lewis-Hoskins v. Personnel Cabinet
- H. Cheryl Sampson v. Justice and Public Safety Cabinet (Corrections)
- I. Lori Scholl v. Tourism, Arts & Heritage Cabinet (Parks)
- J. Milton E. Stroder v. Cabinet for Health and Family Services
- K. Portia Szatkowski v. Finance and Administration Cabinet
- L. Debra Vahle v. Cabinet for Health and Family Services and Personnel Cabinet
- M. Paul Howard v. Transportation Cabinet

- N. Corinne Radford v. Justice and Public Safety Cabinet (Corrections)
- O. Melissa Kay Thomas v. Personnel Cabinet

11. SETTLEMENTS

Dr. Stevens moved to accept the following settlements *en bloc*, as submitted by the parties, and to sustain the appeals to the extent set forth in the settlement. Mr. Blevins seconded and the motion carried 7-0.

- A. Allen Elliott v. Personnel Cabinet & Justice and Public Safety Cabinet (DJJ)
- B. Kristi Vaughn v. Justice and Public Safety Cabinet (DJJ) (2 appeals)
- C. Lauren McKeehan v. Justice and Public Safety Cabinet (DJJ) - mediated
- D. Michael Smallwood v. Cabinet for Health and Family Services

12. OTHER

Meeting dates for 2013:

The Board members discussed the proposed meeting dates for calendar year 2012.

Mr. Sipek advised the Board Members that they will be electing new officers at the October Board meeting.

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Blevins moved to adjourn. Judge Chandler seconded and the motion carried 7-0. (12:35 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Tommy Chandler, Member

Donald W. Blevins, Member

Ramona Herndon-Griffin, Member